83-2054

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ALEXANDER L. STEVAS,
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No._____

IN THE
SUPREME COURT OF THE UNITED STATES

Rainsford J. Winslow and Winifred W. Winslow,
Petitioners,

v.

KEITH D. WILLIAMS, ALMA JEAN WILLIAMS, DAMON A. McMAHAN, DOROTHY McMAHAN, MARGARET E. HARRINGTON, IRVIN R. KAISER, CAROLYN D. KAISER, WILLIAM C. KROSKOB, HELEN P. KROSKOB, MARK R. WEIMER, ARDITH WEIMER, D.E. STEGER, RICHARD H. WATERS, ROSEMARY J. WATERS, BERNIE HODAPP, ELAINE HODAPP, THOMAS WHEELER, ELEANOR WHEELER, JOHN CONN CLATWORTHY, BARBARA BRETT CLATWORTHY, KEITH L. GAY, DONNA J. GAY, LEE O'NEIL, STEVEN B. ARMSTRONG, DEBORAH ARMSTRONG, DWIGHT MOODY, MILDRED MOODY, JOHN F. FILLINGHAM, CHERYL A. FILLINGHAM, CYNTHIA J. BLAKE, ANDREW W. BLAKE, E. MILTON BINFORD,
Respondents,
MORGAN COUNTY COMMISSIONERS, ROBERT BAUER, JOHN LINDELL, HENRY KAMMERZELL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
STATE OF COLORADO

Presented by:
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QUESTIONS PRESENTED

1. Did the Colorado Supreme Court err in not reviewing the rights of more than 100 Morgan Heights Absent Class Members who were given no notice nor a hearing BEFORE Class certification 11 Jun 80? (Seventy-One Absent Class Members, through testimony, affidavits, letters to the Trial Court, or by signing "Opt-Out-Forms" said they wanted no part of this Morgan Heights Class.) U.S. Const., Art. XIV

2. Did the Colorado Supreme Court err by ignoring the pleas of these 71 Absent Class Members, who are now faced with possibly paying part of more than $329,000 in legal fees? (This has put a cloud on the titles of their property, because a new purchaser is subjected to possible legal fees because of the way the Class is certified. (A few who sold, had to escrow money to pay legal fees. Several took less for their property because of the legal fee/Class cloud.) U.S. Const., Art. IXV

3. Did the Colorado Supreme Court err in not granting the Winslows a new trial before an

impartial judge with a jury after reviewing the Winslow PETITION FOR WRIT OF CERTIORARI? (The Winslows attempted to disqualify the Morgan County Trial Judge eight times; three times in the Trial Court, two times in the Colorado Court of Appeals, and three times in the Colorado Supreme Court--denied eight times.) U.S. Const., Art. XIV

4. Did the Colorado Supreme Court err in ignoring the fact that the Trial Court Judge REWARDED an attorney/adversary who admitted that he illegally hooked up to the Winslows' private sewer system, by giving him a free sewer tap when the other 12 on the system paid a tap fee? Also, the same judge gave a FREE sewer tap to another party later, who is an adversary and competing land developer and is also a Named-Plaintiff against the Winlsows. U.S. Const., Art. V & XIV

5. Did the Colorado Supreme Court err in ignoring the fact that the Court Reporter could not provide a complete transcript of the major part of the Morgan Heights case, and this Court

OMITTED prejudicial remarks by the Trial Court Judge. (On 8 Jun 83, the Colorado Court of Appeals demanded that the Winslows purchase this incomplete transcript at a cost of somewhere between $10,000 and $15,000.) U.S. Const., Art. XIV

6. Did the Colorado Supreme Court err in ignoring the fact that the Winslows questioned the credibility of this Court Reporter because of these transcript problems in the Trial Court, the Colorado Court of Appeals, the Colorado Supreme Court, and the press, which is alleged to have made this Court Reporter biased and prejudiced against the Winslows? U.S. Const., Art. XIV

7. Did the Colorado Supreme Court err in ignoring the fact that the Winslows were DENIED two Declaratory Judgment Hearings before a jury as per CRCP 57(m) on 10 Jan 83 and 8 Feb 83 on the "Fair Trial/Impartial Judge Issue" and the "Transcript/Court Reporter Bias and Prejudice Issue." U.S. Const., VII & XIV

8. Did the Colorado Supreme Court err in

ignoring the fact that the Winslows' Attorney had subpoenaed the former Trial Court Judge and the Court Reporter to give testimony on the issues previously mentioned, but were denied a chance to examine them by the new Trial Court Judge? U.S. Const., Art. XIV

9. Did the Colorado Supreme Court err in ignoring the fact that the Colorado Court of Appeals remanded the entire ROAD ISSUE part of the Morgan Heights case back to the Trial Court without review, when the Winslows had paid approximately $80,000 for a decision? By this action, the Winslows have lost the Road Issue Judgment when they feel they would have won it hands down had it been reviewed. (Twelve volumes of transcript, probably 500 exhibits and pleadings and other documents were in the Colorado Court of Appeals and with the Order of Remand, all these documents are back in the Trial Court even though the Winlsows attempted numerous times to have this portion of the case reviewed.) U.S. Const., Art. XIV

10. Did the Colorado Supreme Court err in permitting the Colorado Court of Appeals to DISMISS the entire Morgan Heights case, which

had been trifurcated simply because the Winslows would not order a transcript, which they knew was incomplete and because they feared the Court Reporter was biased and prejudiced against them?

11. Did the Colorado Supreme Court err in not ruling that CRCP 38 is unconstitutional, because this rule does not require full disclosure with regard to jury option for civil litigants? Winslows were not given any jury option by their attorney or by the judge, which is not required by CRCP 38. U.S. Const., Art. VII & XIV

12. Did the Colorado Supreme Court err in not ruling that CRCP 97, concerning the disqualification in civil cases is unconstitutional? (This gives the Criminal Defendant an advantage the Civil Defendant does not get.) US.S Const., Art. XIV

13. Did the Colorado Supreme Court err in not recognizing the discrimination between the Criminal Defendant and the Civil Defendant as to jury demands and the disqualification of judges? The Criminal Defendant has benefits weighted in his favor as Per CRCrP 21(b) and

23 concerning the disqualification of judges and the right to a jury. The Civil Defendant under CRCP 97 and 38, the counterparts, do not get the same benefits. U.S. Const., Art. VI, VII, & XIV

14. Did the Colorado Supreme Court err in not reviewing the Morgan Heights case at all when they denied a Petition For Writ of Certiorari? U.S. Const., Art. V, VII, & XIV

Attorney General Notice

The Colorado Attorney General was given notice as to the possible unconstitutionality of two Colorado Rules of Civil Procedure, namely CRCP 38 and CRCP 97. This was done as per Colorado Appellate Rule 44, but the Colorado Attorney General has not responded. As per Title 28 USC 2403(b), the Colorado Attorney General will be served three copies of this document.

* * *

THE YELLOW BROCHURE

The Morgan Heights YELLOW BROCHURE is a piece of sales literature tucked in back of

this PETITION. It is the cause of this entire legal quagmire started 21 Jun 79, nearly five years ago and the only basis for a $250,000 Judgment against the Winslows. It was not part of any Morgan Heights deed or contract. The Trial Court Judge had this to say about it in the Judgment of 5 Oct 82:

> 46. Proceeding now to the contractual claims based upon the yellow brochure and/or promissory estoppel, the court finds that nothing in the yellow brochure or its manner of distribtuion created any express intergrated contract with any class member as it simply was not ever incorporated by reference or otherwise into any contract of purchase between any class members and Defendants Winslow. Any contractural claim based upon the yellow brochure other than the restrictive covenants therein must therefore proceed upon the theory of promissory estoppel, if at all, because of the Colorado Statute of Frauds, C.R.S. 38-10-108.

For the convenience of this Court, here is the complete Colorado Statute:

> C.R.S. 38-10-108. Contract For Interest In Land Must Be Written. Every contract for the leasing for a longer period than one year, or for the sale of any lands or interest in lands, is void unless the contract or memorandum thereof expressing the consideration is in writing and sub-

> scribed by the party by whom the lease or sale is to be made.

Thus, even the Trial Court Judge recognized that THE YELLOW BROCHURE was sales literature, yet using his "estoppel theory," put a $250,000 Judgment against the Winslows. No case law was cited to back up this theory.

Attorney Raymond C. Johnson, representing the Winslows, told the Trial Court Judge 10 Jan 83 something like this:

> "Your Honor, you are making up new law. You have no basis for this judgment other than THE YELLOW BROCHURE. There is no estoppel case that comes close to what you have done in this Winslow case where a piece of sales literature is binding unless incorporated into a deed or contract, and you agreed."

Here is the gist of what the Trial Court Judge said to Attorney Johnson: " Well, that's the way it is in this Court."

Some of the merits of this case will be cited, but actually that is not at issue in this Petition. What merits will be explained will be done simply to show the bias and prejudice of the Trial Court Judge. What this Petition is all about is how the appeal process has been run.

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PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
STATE OF COLORADO

Petitioners Rainsford J. Winslow and Winifred W. Winslow respectively pray that a Writ of Certiorari be issued to review the ORDER of the Supreme Court for the State of Colorado dated 26 Mar 84. Also, the ORDER of the Colorado Court of Appeals, which dismissed the appeal in the Winslow Morgan Heights case 11 Jan 84. PETITIONS FOR REHEARING were either denied or stricken.

OPINIONS/ORDERS BELOW

The ORDER from the Colorado Court of Appeals dismissing the entire Morgan Heights case, which had been trifurcated, was issued 11 Jan 84. (Appendix A) The Motion to Reconsider Order Of Dismissal was denied 26 Jan 84. (Appendix B)

The Colorado Supreme Court denying the Writ of Certiorari was issued 26 Mar 84. (Appendix C) The Petition For Rehearing by the Colorado Supreme Court 10 Apr 84. (Appendix D)

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked under 28 USC 1254 and

28 USC 2403(b) because there are issues as to the constitutionality of three Colorado Rules of Civil Procedure.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. United States Constitution;

Fifth Amendment (in relevant part):

"No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Seventh Amendment (in relevant part):

"In Suits at common law . . . the right of trial by jury shall be preserved . . ."

Ninth Amendment (in its entirety):

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Fourteenth Amendment (in relevant part):

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor

shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

2. Federal Statutes:

Titles 28 USC 1254, 28 USC 1343, and 28 USC 2403(b).

3. Colorado Rules Of Civil Procedure:

CRCP 23 CRCP 38, and CRCP 97.

INTRODUCTION

Petitioners Rainsford and Winifred Winslow, husband and wife, are ages 63 and 61 respectively. Both are native Americans and believe in the United States. Between 21 Jun 79 and today, the Winslows have been disillusioned with the justice system in their country. This is because of what they feel is bizarre treatment in the Colorado Court system.

As a boy, Winslow became an Eagle Scout, and during World War II, he served in the U.S. Infantry and was awarded the Purple Heart for wounds in action, the Combat Infantrymans' Badge, and the Bronze Star for Valor. After

being graduated with a B.A. Degree in Journalism from the University of Denver (Colorado), he and his wife came to the Morgan County seat where he became Editor of the Fort Morgan (Colorado) Herald, the weekly newspaper. He is a past President of the Fort Morgan Rotary Club, and served on many civic committees over the past 37 years.

Mrs. Winslow is a graduate of the University of Denver, taught in the Denver Public Schools for three years while her husband was serving in the Armed Forces. She is an Elder in the Presbyterian Church. With her husband, she raised three adopted children and all are doing well today. There are six grandchildren. She has also served on many civic committees in Fort Morgan over the past 37 years.

This Petition to the U.S. Supreme Court tells a sad story, not only about the Winslows' plight, but also the plight of more than 100 others. Most of them wanted no part of this Morgan Heights legal quagmire.

The Winslows and at least 71 others pray that this U.S. Supreme Court will review this case

and give judicial relief. The Absent Class Members seek to be excluded from the Class without the threat of paying unauthorized legal fees. The relief the Winslows seek is a NEW, FAIR TRIAL BEFORE AN IMPARTIAL JUDGE IN THE UNITED STATES DISTRICT COURT.

STATEMENT OF THE CASE

1. Rainsford J. Winslow and Winifred W. Winslow started Morgan Heights, a 280 acre subdivision located four miles northwest of Fort Morgan, Colorado 16 Jan 54, 30 years ago. Eighty acres are subdivided, 40 acres nearly subdivided, and 160 acres are undeveloped.

2. Between 1954 and 1971, seven homes were built in Morgan Heights, including the Winslow home, the first one, where they live today. They did not "sell and run." Between 1971 and 1979, 44 additional homes were built. On 21 Jun 79, 19 Morgan Heights families filed a Class Action lawsuit, which claimed the Winslows did not fullfill certain promises pertaining to roads, the sewer and water systems. There was nothing in any deed or contract the Winslows executed, prom-

ising anything except conveyance of the property being purchased.

3. The Morgan County Commissioners, led by Morgan County Attorney E. Ord Wells, were also adversaries of the Winslows in this case. This had to do with the Morgan Heights roads. The Winslows deny the allegations, but the merits of this case are not the main thing at issue here. U.S. Constitutional Rights are at issue.

4. Four of the 33 Named-Plaintiffs (Steger/Williams/Fillingham/O'Neil) have development property either adjoining or near Morgan Heights. Adversary County Attorney Wells has a pecuniary interest in development property adjoining Morgan Heights.

Investment In The Court System

5. The Winslows' Attorney Richard K. Clark, prior to the filing of the lawsuit, said he believed the leaders of the Named-Plaintiffs were making an INVESTMENT IN THE COURT SYSTEM, a concept he said was prevalant in Denver. Unscrupulous land developers/business mogels, file meritless lawsuits against "little guys" to gain con-

trol of the "little guy's" land and/or business. Those who made this INVESTMENT IN THE COURT figure they can spend thousands of dollars in legal fees, costs in the Court to break him , and get control of the business/property desired. Thus, what is spent becomes an investment in gaining control of the property/business.

6. Attorney Clark theorized that these Lawsuit Leaders were interested in the Winslows' water rights, and if successful, would break the Winslows and get the Morgan Heights property for ten cents on the dollar. This would permit the use of the water rights on adjoining land, because the adjoining lands do not have the water rights comparable to the Winslows' water rights.

Jury Rights Not Explained

7. One of the issues in this case is the fact that the Winslows nor any other Colorado civil litigant is given full disclosure regarding jury rights as per the U.S. Const., Art. VII. Neither Attorney Clark nor the Trial Court Judge James R. Leh gave the Winslows the option of having the case tried before a jury or a judge.

CRCP 38 does not require full disclosure of these rights to a civil litigant, which Winslows feel is unconstitutional. The Criminal Defendant is given his "Miranda" rights, but not the Civil Defendant/Litigant. This is not equal protection under the law.

No Fair Trial With Impartial Judge

8. The "Fair Trial/Impartial Judge" is the BIG issue in the Winslow case. It all started 9 Sep 80 when there was a Road Issue Summary Judgment Hearing, which Trial Court Judge Leh denied, apparently because of his personal experiences as a County Attorney and County Commissioner in another County. The Morgan County Commissioners and the Morgan County Attorney were adverse parties to the Winslows. Upon reading the partial transcript of the comments by Judge Leh, and the fact that he had the point of view of a County Commissioner and a County Attorney, Attornies Donald A. Carpenter (a retired District Judge), George Reddin, Robert Chapin, and Raymond C. Johnson determined that a Motion to Disqualify Judge Leh should be filed. Attorney Johnson

filed this Motion with appropriate Affidavit 28 Nov 80 as per CRCP 97 (Change of Judge). This was well before Judge Leh heard any portion of the Winslows' side of the case. Judge Leh denied the Motion to Disqualify himself. (See Appendix E, Motion For Disqualification/Supporting Affidavit/Partial Transcript)

9. Without all the details, several additional prejudicial actions taken by Judge Leh and numerous Courtroom comments by him showed his partiality to the Winslows' adversaries. Eight Motions For Disqualification of Judge Leh were filed. Three times in the Trial Court before Judge Leh himself, two times in the Colorado Court of Appeals, and three times in the Colorado Supreme Court--all Motions denied. Judge Leh finally disqualified himself on his own Motion 21 Jan 83 AFTER what the Winslows feel were three prejudicial Judgments. (This was a trifurcated case.) Attorney Johnson felt these Judgments were the most prejudicial ones he had ever seen in his 34 years of practicing law in

Colorado. The merits of these Judgments dated 30 Jan 81, 1 Jul 81, and 5 Oct 82 are not at issue here. Significant portions of what happened will be explained.

The Civil Disqualification Rule

10. Had CRCP 97, which covers the disqualification of judges in civil cases been written in the same way as CRCrP 21(b), which covers disqualification of judges in criminal cases, Judge Leh would have lost jurisdiction the moment he received the Motion and Affidavit asking for his disqualification. Everything he had done after 28 Nov 80 would have been null and void. This makes CRCP 97 unconstitutional, because this is not equal protection under the law. The Criminal Defendant gets benefits the Civil Defendant does not get. There is also racial discrimination between the two rules (CRCP 97 and CRCrp 21), since proportionately there are more Black and Chicano Criminal Defendants than there are White Civil Defendants.

Judge Leh Rewards Criminal Act

11. On 19 Oct 80, Adversary Stanley I.

Rosener, an Attorney and Morgan Heights resident, who was one of the instigators of the Morgan Heights lawsuit, hooked up to the Winslow owned sewer system without permission and without paying the tap fee that the other 12 customers paid. This is Second Degree Criminal Tampering as pe C.R.S. 18-4-506, a misdemeanor which follows:

> 18-4-506. Second Degree Criminal Tampering. A person commits the crime of second degree tampering if he tampers with property of another, with intent to cause injury, inconvenience, or annoyance to that person or to another, or if he makes unauthorized connections with property of a utility. Second degree criminal tampering is a class 2 misdemeanor.

12. Winslow filed a complaint with the Morgan County Sheriff's Department and turned it over to District Attorney Doyle T. Johns, Jr., who refused to prosecute. On 2 Nov 80, Judge Leh permitted Attorney Rosener to remain on the system. He required a $1,000 escrow deposit, which was refunded to Rosener by the Judgment of 5 Oct. 82. He did not reprimand Attorney Rosener as he is required to do as per CRCP 241.5; he REWARDED him. This shows partiality to an adversary of the Winslows. This is not

equal protection of the laws, and Judge Leh confiscated Winslows' property without compensation, violations of U.S. Const., Art. V and XIV.

More Judicial Discrimination/Partiality

13. On 23 Oct 81, Adversary/Land Developer John Fillingham, who has adjoining/competing subdivision west of Morgan Heights, went before Judge Leh to ask to go on Winslows' sewer system. Judge Leh permitted him to do so, required a $1,500 escrow deposit, and then refunded the $1,500 to Fillingham by the Judgment of 5 Oct 82. Another free sewer tap to a Winslow adversary. A violation of U.S. Const., Art. V and XIV. Of the now 14 Winslow sewer system customers, 12 PAID a tap fee; two got free tap fees.

Judge Gives Away Winslow Land

14. By his 5 Oct 82 Judgment, Judge Leh gave five acres of the Winslows' land, which had been set aside for recreational purposes for the residents of Morgan Heights, to MORGAN COUNTY.

This particular five acres was not an issue by anybody in this case. The Plaintiffs did not demand the land, and neither did adversary Morgan County. This was just a "gift" by Judge Leh to the residents of Morgan County. Would the Morgan Heights residents want to establish a Metro Recreational District for the benefit of all of Morgan County? Apparently, as a former County Commissioner and County Attorney, Judge Leh wanted to REWARD the Morgan County Commissioners with this free piece of choice Morgan Heights land. U.S. Const., Art. V and XIV.

Morgan Heights Class Issue

15. There was a Class Determination Hearing 14 May 80, but no notice to Absent Class Members. Judge Leh didn't require any notice.

16. On 11 Jun 80, Judge Leh determined there was a Morgan Heights Class, and defined it as those persons who owned property on or after 14 May 80. Here is the exact definition as per the 5 Oct 82 Judgment:

> 1. The Court's previous rulings as to class certification reaffirmed . . . (and the) class continues to be composed of all those non-defendant land owners of Morgan Heights as of May 14, 1980, together with their successors and assigns, up to and including the date of the final determination of this lawsuit.

17. This means that if a person who owned property on 14 May 80 sold his property and moved away, that person would still be in the Class and the person buying the property would also be in the Class--no escape. There were approximately ten different efforts to decertify the Class to permit certain members of the Class to opt out, but Judge Leh would not permit anyone to opt out.

18. There are about 109 Absent Class Members and 71 have indicated they wanted to be excluded either by testimony at trial, affidavits filed with the Court, letters filed with the Court, or special forms requesting the opportunity to opt out.

19. What this means to Absent Class Members is that should any one of them wish to sell their home, they will have to give full dis-

closure to the prospective purchaser that said prospective purchaser will be in the Class and subject to possible legal fees that have been charged by Class Attorney Robert J. Dyer III. On 22 Mar 84, he indicated the legal fees were $329,000 and still growing.

20. This means Judge Leh, by his Class Determination Order, has put a legal cloud on all property in Morgan Heights. Several who have sold took less for their property because of this legal cloud. Some have had to post money in escrow to pay possible legal fees in the future to protect purchasers.

21. These Morgan Heights Absent Class Members protested saying they wanted no part of this lawsuit, did not want to be represented by Class Attorney Dyer and did not want to pay any of his legal fees, and wanted to be excluded from the Class. They proclaimed this to the Court, as previously indicated.

22. This list that follows includes the three Winslow children, three Winslow attorneys,

two Winslow business partners, and at least seven close friends, all of whom were forced into the lawsuit, (against the Winslows) against their wills. One of the above mentioned attorneys represented the Winslows in this lawsuit, but yet was included in the Class against them. Here are those who have begged the Trial Court, the Colorado Court of Appeals, and the Colorado Supreme Court to exclude them from the Class: (Listed in no particular order.)

Forrest Atwood	Margaret Atwood
Larry Benton	Teresa Benton
Roger Childers	Anita Childers
Robert Cooper, Jr.	Paula Cooper
L.L. Canfield	Hazel Canfield
Lawrence Floyd	Kathleen Floyd
Jay Garthwaite	Carolyn Garthwaite
Stanley Grimes	Teresa Grimes
Deborah W. Hand	Harriet Paynter
Arthur Holmes	Roberta Holmes
J.V. Ostermiller	Margaret Ostermiller
James Bachar	Margaret Finlayson
Alan Campbell	Nancy Campbell
Robert Cooper, Sr.	Nancy Cooper
David Cornwell	Anita Cornwell
LaVar Floyd	Betty Floyd
Dwaine Gibson	Robert Haffke
Joe Heagney	Raymond C. Johnson
Richard Paynter	Irmalee Pennington
Kay Reed	Miriam Settle
Alex Schutzenhofer	Betty Schutzenhofer
John Stark	Doris Stark
Marshall Ulrich	Dannette Ulrich
Douglas S. Winslow	Mildred Yates
Paul Schlue	Fern Schlue
David Scott	Jan Scott

Larry Shughart	Anna Shughart
Robert Rockwell	Donna Rockwell
Ralph Ward	Norma Ward
Ted Curtis	Nancy Curtis
Fred Nuss	Lucille Nuss
William Vincze	Keith Florian
Emmitt Taylor	Hazel Taylor
David Spencer	Eleanor Spencer
Robert Kelley	Karen Kelley
Joyce Gibson	

Conflict Within The Class

23. In Apr 80, now Absent Class Members Richard B. Paynter and Lawrence Floyd together with Denver Architect Edwin Warner, came to the Winslows to option two large building cites for a 15 unit condominium project, About the same time, Building Contractor David Cornwell had completed three Morgan Heights homes including his own and was about done with a fourth one for Joseph Heagney, who is also in the building business. Both Cornwell and Heagney were interested in building additional homes in Morgan Heights.

24. Real Estate Broker Ted Curtis, with Contractor Lawrence Floyd had built seven homes and had two more "in the wings." They had optioned two lots from the Winslows' children for two more spec homes.

25. On 1 May 79, Paynter and Floyd purchased eight additional sites for further residential development. An additional site had been purchased earlier, so Paynter and Floyd had nine sites for spec homes.

26. Home Developers Heagney, Cornwell, Paynter, Floyd, and Curtis all resided in Morgan Heights and were responsible for the surge of home building in late 1977, all of 1978 and the first part of 1979.

* * *

27. Lawsuit Leader/Condo Developer Keith D. Williams was hard at work on his condo/patio home development called Country Club Estates, which adjoins Morgan Heights to the southeast. The estimated completion cost: $3,000,000. John Fillingham was moving ahead with his new development, Rolling Hills, another subdivision adjoining Morgan Heights on the west. Banker/Land Developer David E. Steger had more than half of his real estate development sold out in Fort Morgan. Lee O'Neil was beginning to develop his subdivision south of Brush, a few miles east

of Fort Morgan. (Williams, Fillingham, Steger, and O'Neil are all Named-Plaintiffs in this lawsuit against the Winslows.)

28. Morgan County Attorney E. Ord Wells, a severe Winslow adversary, was trying hard to sell his Three Lakes, Inc. property, which adjoins Morgan Heights to the east.

29. Adversaries Williams, Steger, Fillingham, and O'Neil all resided in Morgan Heights, but have property to develop OUTSIDE and either adjoining or close by.

30. This is what was going on just prior to the filing of the Morgan Heights lawsuit 21 Jun 79. After that date, every bit of growth in Morgan Heights came to a "screaching halt!" No more Paynter/Floyd/Warner condos; Heagney was stopped cold as were Floyd and Curtis, who could not pick up the option on Winslows' daughter's lot.

31. What did happen was that everything was GO with Williams and his condo program, Fillingham and his project west, Steger and O'Neil were going great guns, and the Three Lakes, Inc.

property, managed by County Attorney Wells SOLD to a developer for $310,000 on 18 Aug 81. (The Wells group paid $15,000 for this 155 acre development property in 1963.)

32. This Court has got to ask the question: How can Real Estate Developers Williams, Fillingham, Steger, and O'Neil [illegible]ly PROTECT the interests of Absent Class Members Paynter, Floyd, Curtis, Heagney, and Cornwell with property to develop within Morgan Heights? They are obliged to PROTECT the interests of the Absent Class Members as per CRCP 23, which is identical to FRCP 23 and the applicable part follows:

> Rule 23. Class Actions
> (a) Prerequisites to class actions.
> One or more members of a class may sue or be sued as representative parties on behalf of all only if:
> (4) The representative parties (Williams, Fillingham, Steger, O'Neil) fairly and adequately PROTECT the interests of the Class. (Capitalization and underscore for emphasis.)

33. There is ample authority to show that when there is conflict of interest between Named-Plaintiffs and the Absent Class Members,

there can be no Class.

34. The Trial Court knows about this severe conflict of interest, the Colorado Court of Appeals knows about this conflict of interest, the Colorado Supreme Court is aware of the conflict, and so is the U.S. District Court and the U.S. Court of Appeals, Tenth Circuit. Yet, not one of these Courts, up to this point, has done anything to protect the interests of the Absent Class Members.

35. As per CRCP 23(a)(4), which has been quoted, it is the olbigation of the Named-Plaintiffs to PROTECT the interests of the Absent Class Members. This didn't happen in the Morgan Heights case, and to the contrary, the Named-Plaintiffs have harmed financially all of these five Absent Class Members who are or were Morgan Heights Real Estate Developers. (See Map, Appendix F.)

36. Federal Administrative Judge Richard B. Paynter, who was a Morgan Heights resident and a Real Estate Developer, wrote a letter to Class Attorney Robert J. Dyer III, 11 Nov 80,

and here are some significant excerpts:

"We definitely feel that you and one or more of the named plaintiffs have failed to represent us or our rights in any respect. On the contrary, you have caused us substantial and irreparable damage and continue to do so by insisting that this case go to trial rather than working on a bona fide effort to settle the case.

Never, in my many years of the practice of law, have I been treated by another attorney in the manner that you have treated me. Again, I reiterate, NEVER, NEVER in my entire practice of law have I been treated in this manner.

It was incumbent upon you to meet with all of us (Absent Class Members) to determine the desires of the named class in this action rather than to continue it in an attempt to, as Mr. Garthwaite stated, conduct a "railroad job."

You and the named plaintiffs are well aware of the fact that Mr. Edwin Warner, architect, and I had in the process a plan for the development of condominiums, in the Second Addition. As a matter of fact, one or more of the named plaintiffs had seen the very detailed and complete plans of these condominiums, and you at that time advised Mr. Rosener that I had concluded that we might have to proceed through a planned unit development hearing prior to the development of these condominiums. You and one or more of the named plaintiffs have also known throughout these proceedings that Mr. Floyd and I had substantial property

interests in Morgan Heights.

May I conclude by stating our total dissatisfaction with the manner in which you have conducted this litigation and the manner in which you have treated not only Mr. Floyd and myself but the Wards, Mr. Garthwaite and many others of the unnamed plaintiffs by totally failing to consult us relative to what we may desire even though you have been fully advised of our interests.

We do not want you to represent us in any manner and deny that you do."

Yours very truly,

Richard B. Paynter

37. Attorney Raymond C. Johnson, who represented the Winslows in this Morgan Heights case, filed a Motion to go before either the United States Court of Appeals or the Colorado Court of Appeals. It was titled: MOTION FOR EXCLUSION FROM THE CLASS. Here are a few significant parts of this Motion:

"Neither my deceased partner's executrix nor I want to be a member of a class opposing the Winslows, whose cause we support.

There are numerous conflicts of interest in this case between the named plaintiffs and members of the purported class. Mr. Dyer has never represented my interests or those of the executrix of James Reed's estate, nor can he do so.

> The continuance of this lawsuit, contrary to my wishes and the wishes of numerous non-party Plaintiffs in this purported class, continues to place a dead hand on sales in the subdivision, and is damaging my personal and property interests."

38. In the 4 Aug 83 issue of THE ROCKY MOUNTAIN NEWS, here is a significant quote:

> "This (Morgan Heights case) is as odd as a $3 bill," said Attorney Raymond C. Johnson, who accepted a subdivision lot in lieu of legal fees. "I certainly don't want to pay (Class Attorney Dyer's) legal (fees).

Lawsuit Leader/Condo Builder Keith D. Williams

39. Condo Builder/Land Developer/Lawsuit Leader/Keith D. Williams, bought his Morgan Heights property from the Winslows in late 1971. He paid $4,000 for his building site, and his contract said that it included the land and water to his lot line, and both were provided. He testified at trial Dec 80 his total cost for his home/lot was $75,000 and he estimated the value that day at $150,000.

40. He bought another lot from the Winslows for $10,000 and a little over six weeks later sold it to Damon McMahan for $14,000. He bought another lot from the Winslows for $6,750 and

and less than a month later he sold it to Fred Nuss for $10,000.

41. He built homes for these Morgan Heights residents at the total price indicated:

Name	Home Cost
McMahan	$ 88,000
Sheldon	60,000
Nuss	100,000
Kaiser	113,500
Kroskob	73,000
	$ 434,500

42. Testimony established that Williams builds homes for cost plus 10%, and on that basis, his profit on these homes was $43,450. Here is a total breakdown of his home profit, lot profit and unrealized home appreciation as per his testimony:

Home Building profit	$ 43,450
Lot profit (McMahan/Nuss)	7,250
Unrealized Appreciation on Williams Home	75,000
	$ 125,700

43. Testimony showed that Williams recommended Morgan Heights to those for whom he built homes. It all changed starting in the late summer of 1978 when the birth of this lawsuit began.

44. It must also be pointed out that Lawsuit

Leader Wiliams testified that he started working on his Condo/Patio Home Development in 1977, but at that point, was stymied because that land had no water rights.

45. Morgan Heights Resident/Attorney Stanley I. Rosener (the one who illegally hooked up to the Winslow sewer system), organized the ROSENER COMMITTEE and Williams was one of the members together with others. J.H. Garthwaite was a member, but he withdrew from it. Here is a portion of his testimony at trial Dec 80: (This transcript quotation is found in Volume VII, Page 1133, Line 6 to Page 1139, Line 18.)

> "At that particular meeting, Mr. Rosener said: "I would like my chance to fuck him over in the Court.' He was talking about Mr. Winslow. It was that statement and frankly the lack of adverse reaction to that statement on the part of others at the meeting, which included to the best of my recollection Mr. Rosener, Mr. Clatworthy, Mr. McMahan, Mr. Sheldon, and Mr. Williams that I just gave up. At that point, I just--there wasn't any--in my mind, there was no chance of coming to any sort of an agreement to settle the thing." (Emphasis added.)

46. Williams condo plans have now been completed. All approvals have been made and he is expecting to break ground on 23 units "anyday."

The Paynter/Warner/Floyd condo plans are "down the drain." (See Appendix I, Schematic Map.)

Bias/Prejudice Of Court Reporter

47. On 2 Dec 81, Attorney Raymond C. Johnson, representing the Winslows, brought up the conflict of interest between Named-Plaintiffs O'Neil/Steger/Williams/Fillingham and the five Absent Class Members who were developing property within Morgan Heights (Paynter/Floyd/Cornwell/Heagney/Curtis.) Judge Leh denied the Motion for Class Decertification and then said something like this:

> "O'Neil's real estate development is near Brush, distant from Morgan Heights. Steger's development is in Fort Morgan but of a different type than Morgan Heights. That leaves Mr. Williams and Mr. Fillingham, with adjoining land to Morgan Heights. Now, if they had really wanted to harm the Winslows, they would not have brought the lawsuit in the first place, they would have just let Morgan Heights go to pot."

48. Morgan Heights was not "going to pot." Quite the opposite, it was progressing in an orderly fashion, and was in compliance with all government regulations. In fact, the year before the lawsuit was filed 21 Jun 79, was the biggest property sales year in the history of

Morgan Heights' 24 years of development.

49. A day or so later, Winslow made an Affidavit of approximately what Judge Leh had said. In Jan 82, BEFORE the major portion of the trial, Attorney Johnson filed another Original Proceeding in the Colorado Supreme Court to disqualify Judge Leh and used the "Williams/Fillingham" statement in an Affidavit which the Winslows signed. In Oct 82, the Winslows filed another Original Proceeding in the Colorado Supreme Court and again used the Leh statement regarding how Williams and Fillingham helped the Winslows by filing the lawsuit against them 21 Jun 79.

50. Winslow then requested testimony of certain witnesses and also the Judge Leh comments of the hearing 2 Dec 81. When the transcript arrived, the Fillingham/Williams comments by Judge Leh were omitted and Court Reporter David A. Martin could not find the partial testimony of five witnesses favorable to the Winslows. Here is precisely what Court Reporter Martin said in his letter dated 12 Nov 82.

Per your request for the testimony of the various witnesses, I have completed what I could find. I could not find the testimony you requested as being asked by Mr. Johnson for the following persons: Mr. and Mrs. Curtis, Mr. Alsip, Mrs. Kelley, Mrs. Larson. Mrs. Floyd and Mrs. Doty were just asked if they agreed with what their husbands had said.

With kindest personal regards, I am,

Yours very truly,

David A. Martin

51. Shortly after this extraordinary revelation, Winslow brought this to the attention of the Fort Morgan Times in several Letters To The Editor as to the credibility of the Court Reporter and this matter was also presented to the Trial Court 10 Jan 83 and subsequently to the Colorado Court of Appeals and the Colorado Supreme Court. There was no rebuttal to any of this by Court Reporter Martin and he could have had his "Day In Court" 8 Feb 83 when he was subpoenaed into Court to testify about the record. Trial Court Judge Marvin W. Foote would not permit testimony of Martin, and Martin <u>did not</u> demand to be heard on the issue of his credibility.

Not until Apr 80 did Court Reporter Martin rebutt the fact that he could not find the testimony of the five witnesses requested, and he never did address the OMITTED comments of Judge Leh at the 2 Dec 81 hearing regarding Williams and Fillingham. When this happens and there is no rebuttal, the stated alleged fact becomes a fact. Therefore it is now undisputed that Court Reporter Martin did OMIT the prejudicial remarks by Judge Leh.

52. With all of these facts regarding the credibility of Court Reporter Martin and how these facts were put before the Colorado Courts, would it not be the fear of anybody ordered to purchase a transcript from such a Court Reporter for $10,000 to $15,000, to be concerned that this Court Reporter was biased and prejudiced against the party questioning his credibility? Would it not be the fear of any person that this Court Reporter might change testimony that could severely damage the party paying for he transcript? This is why the Winslows <u>did</u>

not purchase the transcript of the third portion of this case.

53. The reason the Colorado Court of Appeals DISMISSED the entire Winslow appeal was because we did not provide the Martin transcript to them for review. Only parts existed. It was incomplete and there is ample case law to show that when an Appellant cannot get a complete transcript, a new trial is mandatory.

Road Issue Remand

54. The Morgan Heights case was trifurcated and the three parts are: (1) The Road Issue; (2) Road Issue Attorney Fees Issue; and (3) The Other Issues including sewer, water, etc. There were three Judgments, respectivly: 30 Jan 81, 1 Jul 81, and 5 Oct 82.

55. The first two parts were appealed separately, and they were ready for a decision by the Colorado Court of Appeals by 31 May 82. The record included 12 Transcript Volumes of approximately 200 pages each at $2.25 per page and approximately 500 exhibits/documents/pleadings,

which cost nearly $800. The legal fees and these record costs totaled approximately $80,000.

56. All the briefs from both sides were in and both sides were waiting for a decision from the Colorado Court of Appeals.

57. The Winslows felt good about what they had sent up to the Colorado Court of Appeals and were certain that the Trial Court would be reversed in their favor. Note these undisputed facts:

A. The plat of the Morgan Heights First Addition was recorded in Mar 55, and the Morgan County Road Department started maintaining these roads regularly until 1976. The maintenance included grading and adding road material.

B. Starting in Jan 73, the Morgan Heights roads, all of them, were in the Morgan County road system and the Colorado Highway Users Tax Fund money started accruing to Morgan County.

C. On 28 Jan 74, the Morgan Heights Second Addition was approved by the Morgan County commissioners, <u>including</u> a slight change in the road structure of Bachar Drive, which was moved slightly to what it had been.

It was definitely established that none of the Morgan Heights roads had to be paved.

D. The Morgan Heights Second Addition road change was not made until the summer of 1975, but it was constructed according to the way the first roads in Morgan Heights had been constructed. Morgan County made no complaint about the way the Morgan Heights roads were constructed either in 1955 or in 1975.

E. All of the Morgan Heights roads, including the changed direction of Bachar Drive were maintained by the Morgan County Road Department. In late 1976, the Morgan County County commissioners stopped maintaining all of the Morgan Heights roads because they took the position that the Morgan Heights roads were private. (Even though they were getting Colorado Highway Users Tax Fund money.

F. Testimony was established that the Morgan County Commissioners didn't know they were getting money for the Morgan Heights roads, but they continued getting the money for them after they had stopped maintaining the roads in 1976, 1977, 1978, 1979.

G. No County Commissioner or County official complained about how the Morgan Heights roads were constructed until 90 days after the Morgan Heights lawsuit was filed.

H. County Attorney E. Ord Wells, who at that time had an ownership interest

in competing development property adjoining Morgan Heights to the east, was approached by Plaintiffs and/or their attorneys to come into the lawsuit against the Winslows as Plaintiffs. Attorney Wells said that Morgan County would be Defendants and support the Winlsows' position that they had complied with all road requirements.

I. It was about this time that County Attorney Wells and his partners in the competing development property wanted to sell it and it is believed that they either had been trying earlier or were putting a campaign on after the Morgan Heights lawsuit had been filed. At any rate, Attorney Wells on 21 Sep 79 reversed course and through the County Commissioners, said they had not complied with road requirements.

J. So, in summary, the Morgan Heights Second Addition roads were approved by agreement 28 Jan 74 and between that date and 21 Sep 79, there had been no complaint about the Winslow Morgan Heights roads. (It was later established that Attorney Wells enriched himself to the tune of $30,000 in legal fees from the Road Issue litigation portion of the Morgan Heights case.)

58. There never was any explanation for this reverse in position by Attorney Wells and there never was any document of any type given the Winslows indicating that their Morgan Heights

roads were not in compliance, EXCEPT the pleading in the Court record filed 21 Sep 79. Was it Plaintiffs' Attorney Dyer who convinced Wells that he might enrich himself if he switched positions?

59. All of these undisputed facts and many more were presented to the Colorado Court of Appeals through the Winslow briefs. They felt certain that they would win justice when the Colorado Court of Appeals reviewed the Road Issue portion.

60. The 28 Jan 74 Improvement Agreement, which accepted the Morgan Heights Second Addition Plat and the slight change of Bachar Drive, indicated that attorney fees could be awarded if Morgan County had to enforce the agreement. On 1 Jul 81, Judge Leh awarded Morgan County nearly $8,000 in legal fees and this was the second part of the case. The brief on this portion were also in and of course, was tied to the first portion.

61. What happened? On 7 Feb 83, the Colorado Court of Appeals remanded both parts

of the Road Issue case back to the Trial Court on a theory the Winslows still do not understand. (The ORDER OF REMAND of 7 Feb 83 is Appendix A.)

62. On 9 Feb 83, the ENTIRE Morgan Heights case went right back to the Colorado Court of Appeals--all three parts. Sometime in Apr 83, the Colorado Court of Appeals, without notice to the Winslows or their attorney Raymond C. Johnson, sent the entire record, transcripts, documents, everything back to the Trial Court. Even though Attorney Johnson attempted to have it sent back for review, the Colorado Court of Appeals refused. To this day, all of the Road Issue documents are in the Morgan County Trial Court archives. They never were reviewed. The Winslows lost this portion of the case, and though they had spent $80,000, it was hopeless. <u>It wasn't reviewed</u>.

63. While the two parts of the Road Issue case are not at issue in this PETITION, what has been presented is to show the injustice done to the Winslows , by the bias of Judge Leh.

The Rest Of The Morgan Heights Case

64. The 5 Oct 82 JUDGMENT was 59 pages single spaced. Attorney Johnson said to the Winslows: "Judge Leh wove a legal web around you like I have never seen before."

65. The entire Judgment was based upon a piece of sales literature called THE YELLOW BROCHURE, which was not part of any deed or contract. All anyone had to do was to say he received the brochure before he bought and he was given cash awards. This last sentence should be repeated! Anyone who said he received the Yellow Brochure BEFORE he purchased property from anybody, no matter where he got the Yellow Brochure was given cash awards.

66. There were 25 families who were given cash awards and 13 of the 25 did not buy from the Winslows, they bought from others. These 13 families who did not buy from the Winslows were awarded $141,402 for fraud.

67. Again, there was no deed or contract that referenced the "Yellow Brochure." It

was not incorporated into any deed or contract.

68. Here are some items that were either included or excluded from the Judgment 5 Oct 82:

A. There were 62 witnesses who testified the Winslows owed them nothing nor did the Winslows damage them. Yet, of these, eight families were awarded $61,406.

B. Six acceptable Affidavits and the testimony from 47 witnesses indicated they wanted no part of the representation of Attorney Robert J. Dyer III, nor did they want to be in the Morgan Heights Class as Plaintiffs/Absent Class Members.

69. This was not reported in the Judge Leh Judgment of 5 Oct 82. In fact, virtually none of the Winslows' side of the story was reported in this Judgment.

70. This case, which started 21 Jun 79 and which is still going on today, is the longest running case of any kind in the Colorado Thirteenth Judicial District with the biggest record comprising probably 2,000 or more pleadings/documents/exhibits. The legal fees for both sides exceed $530,000.

LEGAL ARGUMENTS

71. There are basically two issues that are being presented to this Court. Either one is sufficient to grant the Winslows a new trial.

A. The Winslows did not get a fair trial before an impartial judge.

B. The Winslows entire case was dismissed because they did not purchase a transcript estimated to cost somewhere between $10,000 and $15,000 from Court Reporter David A. Martin, which the Winslows know was incomplete, inaccurate, and there were significant omissions in it.

Because of the pleadings the Winslows filed in the Morgan County Trial Court, the Colorado Court of Appeals, the Colorado Supreme Court, the U.S. District Court, the U.S. Court of Appeals, and the United States Supreme Court, regarding the poor recording by Court Reporter Martin, they feel that he, Martin, was biased and prejudiced against them, and could have "doctored" any transcript the Winslows might have purchased.

Biased and Prejudiced Judge

72. The Winslows attempted to have Judge Leh disqualified EIGHT times; three times in the Trial Court, two times in the Colorado Court of Appeals, and three times in the Colorado Supreme Court by original proceedings. All

Motions for disqualification denied. Judge Leh did finally disqualify himself 21 Jan 83, after delivering what the Winslows feel were three prejudicial Judgments.

73. The first Motion for disqualification came 28 Nov 80 and according to a United States Supreme Court landmark case, Judge Leh lost jurisdiction on that date because the Motion was filed with Affidavit, which was sufficient. Berger v. United States, 255 U.S. 22. This case is used in virtually any judge disqualification case.

74. There are other cases that are significant and include Fowler v. Lindsay, 3 U.S. 411, which goes to not only the disqualification of the judge, but an incomplete transcript situation. This is a 1799 case, which is 185 years old.

75. There are a couple of Colorado cases that are also significant. People v. District Court, 560 P.2d 828; and Carl Johnson v. District Court, 674 P.2d 952, which was issued

9 Jan 84. In Johnson, supra, it made it mandatory that the judge disqualify himself when a Motion is made with Affidavit. It took the discretion away from the Trial Court Judge as to ruling upon his own disqualification. This case REQUIRED the judge to disqualify himself and step aside. This follows Berger.

76. Wyoming in Apr 82 gave a civil litigant a preemptory challenge on any judge, and there are other states that give the same benefit. Approximately 35 states follow the Berger theory and Winslows found this out himself by a survey he made of all 50 states.

Incomplete Transcript Issue

77. The reason the Winslows lost the entire appeal without review was because they did not purchase the Martin Transcript. They knew it was incomplete, inaccurate, and significant portions omitted. Undisputed.

78. The Colorado Court of Appeals demanded that the Winslows purchase this transcript. It would be like requiring a one armed man to roll up his sleeve with the arm that isn't there.

79. There are literally hundreds of cases that state that when an Appellant cannot get a complete transcript, he is granted a new trial. Such a case is Calhoun v. U.S., 384 F.2d 180 In C.J.S. under the heading APPEAL & ERROR, §1946, it says regarding Imperfect Record:

> A new trial or other proceeding may be directed, where the record is so defective or deficient as to prevent the appellate court from rendering final judgment.

80. Cases that go wth this theory include: Anders-Hightower, Inc. v. Huie & Son, 127 So. 21; Lyon v. Crabtree, 64 S.W. 2d 24; Mills v. Latham, 219 S.W. 2d 609; and numerous other citations omitted.

81. In the Winslow case there is a difference, not only did the Court Reporter not find the testimony of five witnesses favorable to the Winslows, but he omitted prejudicial comments by the trial Court Judge. At a special hearing in the U.S. District Court on 5 Jan 84, there were four witnesses who said that Court Reporter Martin omitted these prejudicial re-

marks. Court Reporter Martin could have been at this hearing but he was not and he has never rebutted the testimony of these four witnesses who testified 5 Jan 84.

REASONS FOR GRANTING REVIEW

82. Here is a point by point summary of the reasons for granting review of this PETITION:

A. More than 100 Absent Class Members put into Class Action lawsuit, certified without due process.

B. The Morgan County Trial Court put a legal cloud on the property of every Class Member.

C. The Winslows did not receive a fair trial before an impartial judge. They tried to disqualify this judge EIGHT times--denied each time.

D. At least four jury demands denied.

E. Judge rewards criminal act.

F. Trial Court Judge gives adversary free sewer tap.

G. Judge gave away five acres of Winslows' land earmarked for the residents of Morgan Heights to all of MORGAN COUNTY, when it wasn't even an issue by anyone.

H. Court Reporter can't find testimony of five witnesses favorable to the Winslows.

I. Court Reporter omits prejudicial remarks by Trial Court Judge,which would have proven his bias and prejudice.

J. Because Winslows questioned the credibility of Court Reporter Martin, it is believed he is biased and prejudiced against them.

K. Winslow spent $80,000 to get a review in the Colorado Court of Appeals, but this Court remanded it back to the Trial Court for an unknown reason, and then dismissed the entire matter without review.

L. In Colorado, the civil litigant is not necessarily given his rights regarding a jury as per CRCP 38, which is believed to be unconstitutional because there is no requirement to give a civil litigant a jury/judge option.

M. It is believed that CRCP 97, regarding Change Of Judge, is unconsitutional because it leaves the matter of the disqualification of a judge up to the judge himself. A Motion to disqualify a judge could, in itself, prejudice the judge against a civil litigant.

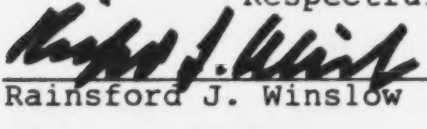
83. It is believed that any of these issues, especially the one regarding the bias and prejudice of the Court Reporter, which probably never has come up as an issue in other cases, is reason to grant a review of this PETITION.

CONCLUSION

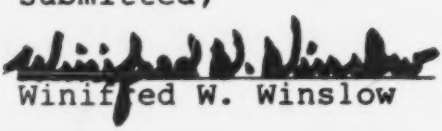
84. The biggest issue of all is the fact that the Winslows were not given a fair trial before an impartial judge. It is believed that this PETITION proves this. They need a fair trial, a new trial with a jury before an impartial judge. Berger v. U.S., supra.

85. Petitioners plead with this Court that it will require the Respondents to file an answer to this Petition because the Petitioners are convinced that Respondents cannot dispute any of the facts put forth in this document.

Respectfully submitted,



Rainsford J. Winslow



Winifred W. Winslow

Opposing Counsel

E. Ord Wells, Esq.
229 East Kiowa Ave.
Ft. Morgan, Co 80701
Representing:
Morgan County, Co

Robert J. Dyer III, Esq.
825 Logan
Denver, Co 80203
Representing:
Plaintiffs

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF MORGAN)

RAINSFORD J. WINSLOW and WINIFRED W. WINSLOW, of lawful age, being first duly sworn upon their oaths, depose and state as follows:

That they have read the foregoing PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT, STATE OF COLORADO, know the contents thereof, and that the statements therein contained are true and correct to the best of their knowlege, information, and belief.

Rainsford J. Winslow Winifred W. Winslow

SUBSCRIBED AND SWORN TO BEFORE ME THIS 6th day of June, 1984.

WITNESS my hand and official seal.

My commission expires August 4, 1987.

(SEAL) NOTARY PUBLIC STATE OF COLORADO JEAN K. NIELSEN

Notary Public
Jean K. Nielsen
506 Deuel Street
Fort Morgan, Co 80701

APPENDIX A

Colorado Court Of Appeals

Keith D. Williams, et al., Plaintiffs, v. Rainsford J. Winslow, et al., Defendants-Appellants, and Morgan County Commissioners, et al., Defendants-Appellees. Tr. Ct. No. 79 CV 97, Co. Ct. Appeals Nos. 81 CA 0297, 82 CA 0310.

Filed: February 9, 1983

Order Of Remand

The court having reviewed the briefs and the oral arguments presented regarding the above-captioned actions, and being fully apprised in the premises,

IT IS ORDERED that these appeals are hereby DISMISSED, without prejudice, on the ground that there are other material issues between the parties regarding the subject matter of these appeals which have not been reduced to final judgment and therefore, the C.R.C.P. 54(b) orders issued in the two appeals were improvidently granted. These cases are, therefore, remanded to the trial court for further proceedings. Haring Glass v. Jones, 640 P.2d 1123 (1982); Alexander v. City of Colorado Springs, ___ P.2d. ___ (Colo. App. 1982, Announced September 2,

1982, Announced September 2, 1982).

Each party shall pay its own costs expended to date on these two appeals.

BY THE COURT: Division II Pierce, J.
Berman, J.
Tursi, J.

Dated: February 7, 1983

APPENDIX B

Colorado Court Of Appeals

Keith D. Williams, et al., Plaintiffs-Appellees and Cross-Appellants, v. Rainsford J. Winslow, et al., Defendants-Appellants and Cross-Appellees, and Morgan County Commissioners, et al., Defendants-Appellees. Tr. Ct. No. 79 CV 97, Co. Ct. Appeals No. 83 CA 0211.

Filed: June 9, 1983

Order

The court has reviewed this file in great detail, and is aware that the following motions are on file in this court and have not been disposed of: (17 non-applicable motions ommitted, and unapplicable decisions omitted.)

The defendants-appellants shall have to and including December 9, 1983, within which to file the record on appeal with this court in accordance with the Colorado Appellate Rules with briefs to be filed thereafter as prescribed in said Rules.

BY THE COURT: DIVISION I Pierce, J.
Van Cise, J.
Babcock, J.

DATED: June 8, 1983

APPENDIX C

Colorado Court Of Appeals

Keith D. Williams, et al., Plaintiffs-Appellees and Cross-Appellants, v. Rainsford J. Winslow, et al., Defendants-Appellants and Cross-Appellees, and Morgan County Commissioners, et al., Defendants-Appellees. Tr. Ct. No. 79 CV 97, Co. Ct. Appeals No. 83 CA 0211.
Filed: January 11, 1984
Order

The matter having come on for consideration of the motion to dismiss filed by appellees, the motion for damages and costs pursuant to C. A.R. 38 filed by the appellees, and the motion to complete record filed by appellants,

The court having considered the motions and the responses thereto and now believing itself to be fully advised in the premises,

IT IS THEREFORE ORDERED that the motion to dismiss is GRANTED and the appeal and cross-appeal are hereby DISMISSED with prejudice, each party to pay its own costs and attorneys' fees.

IT IS ALSO ORDERED that the motion for damages

and costs pursuant to C.A.R. 38 is DENIED.

IT IS FURTHER ORDERED that the motion to complete record is DENIED.

BY THE COURT: Pierce, J.
Van Cise, J.
Babcock, J.

Dated: January 11, 1984

APPENDIX D

Colorado Court Of Appeals

Keith D. Williams, et al., Plaintiffs-Appellees and Cross-Appellants, v. Rainsford J. Winslow, et al., Defendants-Appellants and Cross-Appellees, and Morgan County Colorado, et al., Defendants-Appellees. Co. Ct. Appeals No. 83 CA 0211.

Filed: January 26, 1984

Order

Upon consideration of the Petition for Rehearing on dismissal filed by the Def-Appellants herein, said Petition is hereby denied. Unless otherwise ordered, mandate will issue February 2, 1984.

BY THE COURT,

DATED: January 26, 1984

APPENDIX E

Colorado Court Of Appeals

Keith D. Williams, et al., Plaintiffs-Appellees, v. Rainsford J. Winslow, et al., Defendants-Appellants and Morgan County Commissioners, et al., Defendants-Appellees. Co. Ct. Appeals No. 83 CA 0211.

Filed: January 31, 1984

Order

Upon consideration of the Motion for Stay of Mandate filed in this case, it is ordered that issuance of the Mandate hereby be, and the same hereby is, stayed to and including Feb 27, 1984, provided that if Petition for Writ of Certiorari is timely filed with the Supreme Court of the State of Colorado, the stay shall remain in effect until disposition of the within cause by the Supreme Court.

FOR THE COURT OF APPEALS:

DATED: January 31, 1984

APPENDIX F

Supreme Court, State Of Colorado

Rainsford J. Winslow, et al., Petitioners v. Keith D. Williams, et al., Respondents. Supreme Court Case No. 84 SC 78.

Filed: March 26, 1984

Certiorari To The Colorado Court Of Appeals

Order Of Court

Upon consideration of Writ of Certiorari to the Colorado Court of appeals, and after review of the record, the briefs, and the opinion of the Court of Appeals,

It is this day ordered that said Petition for Writ of Certiorari shall be, and the same is hereby DENIED.

BY THE COURT EN BANC

Justice Neighbors and Justice Lohr did not participate.

Dated: March 26, 1984

Certified by:
Linda Macias
Chief Deputy Clerk

APPENDIX G

Supreme Court, State Of Colorado

Rainsford J. Winslow, et al., Petitioners, v. Keith D. Williams, et al., Respondents. Co. Supreme Court Case No. 84 SC 78.

Certiorari To The Colorado Court Of Appeals

Order Of Court

Upon consideration of the Petition for Rehearing filed by Petitioners, Rainsford J. Win-

slow and Winifred W. Winslow herein, and now being sufficiently advised in the premises,

It Is This Day Ordered that said Petition shall be, and the same hereby is, Stricken.

BY THE COURT, APRIL 9, 1984

APPENDIX H

Morgan County District Court
State Of Colorado

Keith D. Williams, et al., Plaintiffs, v. Rainsford J. Winslow, et al., Defendants, Tr. Ct. 79 CV 97.

Filed: November 28, 1980.

Motion Of Rainsford J. Winslow and Winifred W. Winslow To Disqualify The Honorable James R. Leh

COME NOW the Defendants Rainsford J. Winslow and Winifred W. Winslow by their attorneys JOHNSON & REED and Raymond C. Johnson, and pursuant to Rule 97, C.R.C.P., move that the Honorable James R. Leh disqualify himself as the trial judge in the within action for the reason set forth in the Memorandum relating

to disqualification filed herewith and supporting Affidavit.

JOHNSON & REED

Raymond C. Johnson, #3178

* * *

Filed: November 28, 1980.

Memorandum In Support Of Motion For Disqualification

The Defendants Winslow have this date filed their Motion for Disqualification of the Honorable James R. Leh to sit as trial judge upon the within action.

They have done so regretfully, and respectfully, and only after a great deal of discussion with advisors and counsel, and substantial and serious consideration.

The first reason for requesting that the Honorable James R. Leh disqualify himself is that whether he recognizes it or not, it appears from his remarks made at time of ruling on Motion for Summary Judgment that he

may be biased or prejudiced by reason of his personal experiences as a County Attorney and County Commissioner. In said ruling, the Court adverted to his personal experiences as a County Attorney and County Commissioner, which were not in evidence in the case or proper for consideration therein.

Even if the Court believes that his experiences in representing a county and in being a public official of a county will not influence him in this action, it is respectfully submitted that he cannot help having a subconscious bias as a result of the views and opinions he has formed in acting as County Attorney and as a County Commissioner in the past.

Next, the Honorable James R. Leh has a reputation in the Community as a "consumer advocate."

Knowledge of this reputation in the community has reached the Defendants Winslow

from various sources.

It is not believed that the Court would in any way have a conscious bias or prejudice in favor of the Plaintiffas as "consumers" i.e. home purchasers in a subdivision, but again, it is submitted that having had a bias in favor of persons in the position of "consumers" prior to his appointment as a judge the Court cannot help having a subconscious bias or prejudice in favor of the Plaintiffs in this action.

Accordingly, it is respectfully requested that the Court disqualify himself pursuant to the provisions of Rule 97, C.R.C.P.

JOHNSON & REED

Raymond C. Johnson, #3178

* * *

Dated: November 24, 1980.

Affidavit Of Defendants Winslow in Support Of Motion To Disqualify

The Defendants Rainsford J. Winslow and

Winifred W. Winslow, being sworn upon their oaths, and of lawful age, depose and state as follows:

1. That the transcript, a copy of which is attached to Defendants' Memorandum in Support of Motion to Disqualify, is a true and accurate transcript of the remarks of this Honorable Court made at time of ruling on summary judgment, reflecting the Court's consideration of his own experiences as County Attorney and as County Commissioner, not in evidence before him at the time.

2. That they have heard from sources in the community that the reputation in the community of the Honorable James R. Leh prior to his appointment as a judge, was a reputation as a "consumer advocate", dedicated to the interests of persons as "consumers", who would be in position comparable to the purchasers of homes and lots

within the Winslow subdivision and Morgan Heights subdivision, Morgan County, Colorado, and thus in the position of Plaintiffs herein.

FURTHER AFFIANTS SAY NOT.

Rainsford J. Winslow
Winifred W. Winslow

REPORTER'S PARTIAL TRANSCRIPT
(Relevant Part, Judge James R. Leh's Ruling)
Summary Judgment Hearing, 9 Sep 80

FACTUAL NOTE:

It was undisputed that the Morgan County Commissioners had been getting Colorado Highway Users Tax Funds for the Morgan Heights roads starting in 1973, but stopped using these funds on the Morgan Heights roads in 1976, even though they were still getting these funds. Here is the relevant part of the transcript of Judge Leh's comments on Page 5,Lines 11 to 27:

THE COURT: Insofar as the use of the County tax--sorry--state highway users tax funds are concerned, I agree that may have some bearing on the outcome of either issue of implied or legal acceptance. How much I'm not sure. The Court simply states its

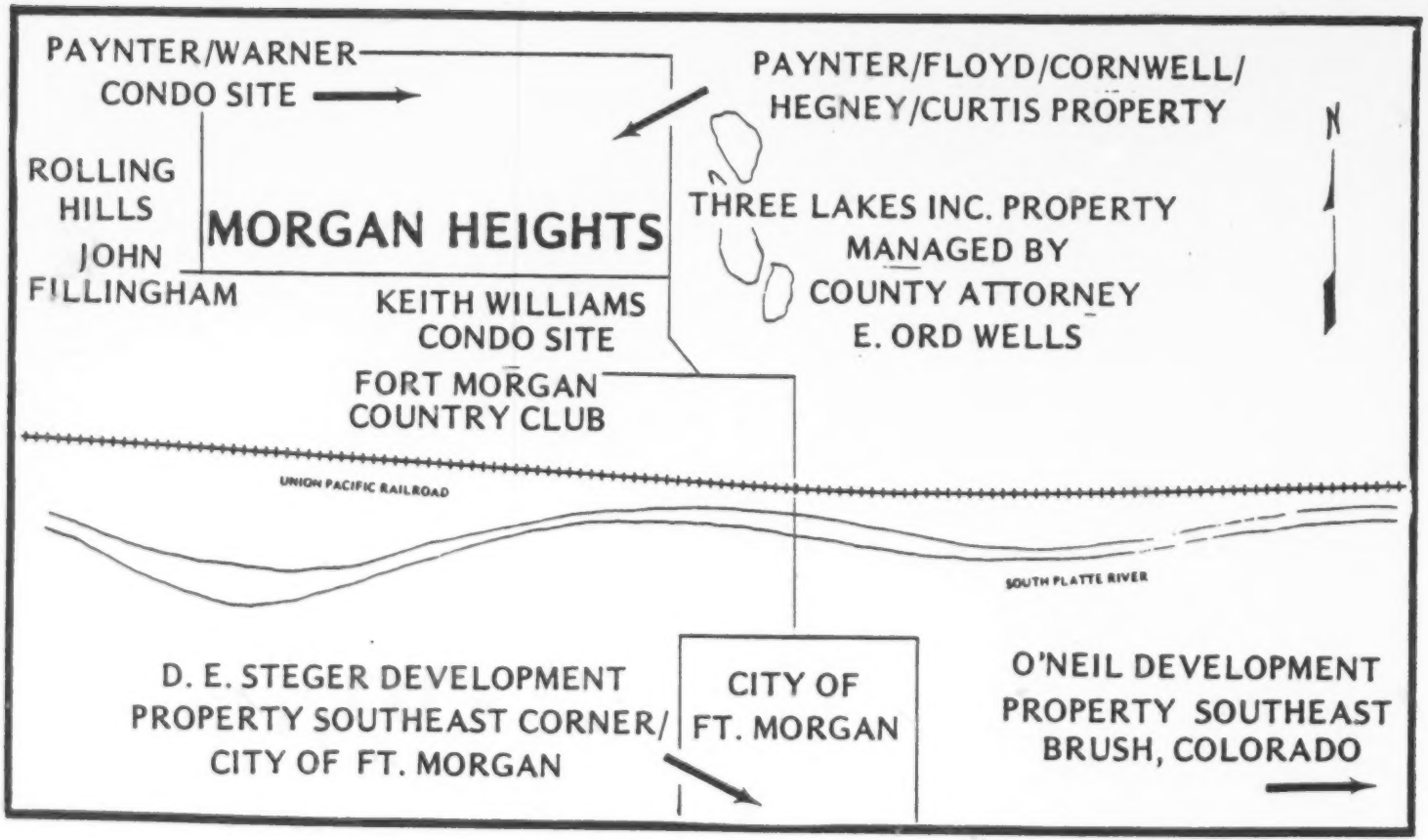
previous experience in this field, which I am sure is familiar to the parties involved, counsel involved. I was once a county attorney and also once a county commissioner and I am aware that perhaps, if anything, it debilitates against the argument that twenty year statute that is being argued for by counsel, since this wasn't even done, as I understand it, until '73. And at that point, just procedurally, what generally happens is that the state presents what you have sort of revealed here on a computer printout. And to put it rather bluntly, the County Commissioners are so tickled to death to get some money from the state they don't often look too carefully at what roads are included, but they look more carefully at what has been excluded, and do it from the standpoint of additional revenue to the county road fund.

* * *

Judge Leh denied the Motion For Summary Judgment on the road issue.

* * *

Transcript Certified by Court Reporter David A. Martin 28 Sep 80.


PAYNTER/WARNER
CONDO SITE
PAYNTER/FLOYD/CORNWELL/
HEGNEY/CURTIS PROPERTY
ROLLING
HILLS
JOHN
FILLINGHAM
MORGAN HEIGHTS
THREE LAKES INC. PROPERTY
MANAGED BY
COUNTY ATTORNEY
E. ORD WELLS
N
KEITH WILLIAMS
CONDO SITE
FORT MORGAN
COUNTRY CLUB
UNION PACIFIC RAILROAD
SOUTH PLATTE RIVER
D. E. STEGER DEVELOPMENT
PROPERTY SOUTHEAST CORNER/
CITY OF FT. MORGAN
CITY OF
FT. MORGAN
O'NEIL DEVELOPMENT
PROPERTY SOUTHEAST
BRUSH, COLORADO

APPENDIX F.